

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOHN H. ROSKY,

Petitioner,

v.

QUENTIN BYRNE, *et al.*,

Respondents.

Case No. 3:16-cv-00156-MMD-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner.

Petitioner has paid the filing fee for this action. (ECF No. 1). The Court has reviewed the habeas petition (ECF No. 2), and it will be served on respondents. Respondents must file a response to the petition, as set forth at the conclusion of this order.

Petitioner has filed a motion seeking a copy of the docket sheet for this case. (ECF No. 5). Good cause appearing, petitioner's motion is granted. The Clerk of Court is directed to send petitioner a copy of the CM/ECF docket sheet in this case.

Petitioner has filed a motion for summary judgment. (ECF No. 7). Petitioner's motion is denied, as summary adjudication of a habeas corpus matter is unavailable. *See Gordon v. Duran*, 895 F.2d 610, 612 (9<sup>th</sup> Cir. 1990) (citations omitted). To the extent that petitioner's motion is construed as a motion seeking default judgment, it is settled law that default judgments are not available in federal habeas corpus. *See Townsend v. Sain*, 372 U.S. 293, 312 (1963); *see also Gordon*, 895 F.2d at 612.

Petitioner has filed a "motion for judicial action." (ECF No. 8). To the extent petitioner argues that he is entitled to summary judgment, the motion is denied.

1 Moreover, the instant order, by which respondents will be served with the petition,  
2 renders petitioner's motion moot.

3 It is therefore ordered that the Clerk electronically serve the petition (ECF No. 2)  
4 upon the respondents. The Clerk of Court will add Attorney General Adam Paul Laxalt  
5 to the CM/ECF docket sheet as counsel for respondents.

6 It is further ordered that respondents will have forty-five (45) days from the entry  
7 of this order within which to answer, or otherwise respond to, the petition. In their  
8 answer or other response, respondents must address all claims presented in the  
9 petition. Respondents must raise all potential affirmative defenses in the initial  
10 responsive pleading, including lack of exhaustion and procedural default. Successive  
11 motions to dismiss will not be entertained. If an answer is filed, respondents must  
12 comply with the requirements of Rule 5 of the Rules Governing Proceedings in the  
13 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner will  
14 have forty-five (45) days from the date of service of the answer to file a reply.


15 It is further ordered that any state court record exhibits filed by respondents must  
16 be filed with a separate index of exhibits identifying the exhibits by number or letter. The  
17 hard copy of all state court record exhibits must be forwarded, for this case, to the staff  
18 attorneys in the Reno Division of the Clerk of Court.

19 It is further ordered that petitioner's motion for a copy of the docket (ECF No. 5)  
20 is granted. The Clerk of Court will send petitioner a copy of the CM/ECF docket in this  
21 case.

22 It is further ordered that petitioner's motion for summary judgment (ECF No. 7) is  
23 denied.

24 It is further ordered that petitioner's motion for judicial action (ECF No. 8) is  
25 denied.

26 DATED THIS 16<sup>th</sup> day of September 2016.

27   
28 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE